

(COPY)

December 23, 1955

L-55-615

M-8

Mr. James J. Wagner  
Mr. Frederick E. Stout  
Attorneys for Waukegan North  
Chicago Transit Company  
105 West Madison Street  
Chicago 2, Illinois

Mr. George M. Harrison  
Grand President  
Brotherhood of Railway and Steam-  
ship Clerks  
Brotherhood of Railway Clerks Building  
Cincinnati 2, Ohio

Mr. O. David Zimring  
Counsel for  
Division 900 Amalgamated Association of  
Street, Electric and Motor Coach Employees  
of America  
11 South LaSalle Street  
Chicago 3, Illinois

Re: Status of Waukegan North Chicago  
Transit Company (In the Matter of  
the Petition of Waukegan North  
Chicago Transit Company for a  
Redetermination)

Dear Sirs:

I have carefully considered the evidence submitted in support of, and in opposition to, the position of the Waukegan North Chicago Transit Company in the matter of its claim to be no longer covered by the Railroad Retirement Act and the Railroad Unemployment Insurance Act. The essential facts of the case are not in dispute to any substantial extent, each of you has clearly set forth his position, and I believe a ruling may be made without oral hearings or additional argument by counsel.

The Transit Company was determined to be an "employer" under the Railroad Retirement Act and the Railroad Unemployment Insurance Act in a ruling by this office on August 11, 1948. This ruling, that the Company was covered as an "employer", was specifically requested by the Transit Company and by the Chicago North Shore and Milwaukee Railway Company, which at that time owned and controlled the Transit Company.

It was pointed out that when in 1948 the Railway Company transferred its bus operations in and around the City of Waukegan to the newly organized Transit Company, the Railway Company employees who had been engaged in motor bus operations had been transferred to the Transit Company, and both the companies and the employees desired that the employees should continue to receive the benefits afforded them by those acts. The Railway Company was dissolved and ceased to be a corporation in 1954, after it conveyed its railroad properties to a new corporation, the Chicago North Shore and Milwaukee Railway, which now operates them. The Transit Company admits that since that time it has been owned and controlled by the Chicago North Shore System, Inc., and that the latter corporation also controls the Chicago North Shore and Milwaukee Railway. I find, therefore, that there has been no such change in ownership or control with respect to these companies as to have any effect on the status of the Transit Company as an "employer" under the Acts.

The ruling of August 11, 1948, that the Waukegan North Chicago Transit Company performed a service "in connection with" the transportation of passengers by railroad and, thus, as a carrier-affiliated company, was an "employer" under the Acts, was based upon evidence which indicated that certain of the Transit Company's bus operations in and about the cities of Waukegan and North Chicago were auxiliary services, supplemental to the rail operations of the Chicago North Shore and Milwaukee Railway Company. One of the principal circumstances, as described by the Company itself in a letter dated July 21, 1948, on which the finding was based, was the following:

" . . . In order for patrons to use the Railway Company's Shore Line southbound whose journey has its origin in the City of Waukegan, it is necessary for them to ride buses now operated by the Transit Company while in the City of Waukegan and transfer to the rail line at the northern city limits of North Chicago or at North Chicago Junction or at Great Lakes, and northbound rail passengers must complete their journey into the City of Waukegan by transfer to said buses either at Great Lakes, North Chicago Junction, or the northern city limits of North Chicago, and rail tickets are honored on the buses for that purpose."

The bus service referred to in this statement was the Transit Company's service along Genesee Street, Sheridan Road, and State Street, between the Railway's downtown Waukegan station and the Great Lakes Naval Training Center at Downey. This bus service was originally initiated and operated by the Railway Company as a substitute for the railroad and local street car service which it had previously performed on a single track system, this being part of the original Shore Line Route of the North Shore from the downtown Waukegan station to Chicago.

The Transit Company's bus service along Washington Street, serving the Edison Court Station of the Railway Company's main line through Waukegan, and also been originated by the parent Railway Company, this being purely a street-car service, however, for which buses were later substituted by the Railway. Until February 1, 1954, free transfer of passengers between the rail lines and the bus lines was permitted, under the tariffs of the Transit Company and of the Railway Company, both at the Edison Court Station on the main line and at the Tenth Avenue Station on the Shore Line Route.

Another pertinent arrangement related to a bus line, also formerly operated by the Railway Company, from the downtown business section of Waukegan along Sheridan Road to the Illinois-Wisconsin state line, passing through the easterly part of Zion and Winthrop Harbor. Rail tickets from Winthrop Harbor or Zion to points south of Waukegan were honored on the buses of the Transit Company as far as Waukegan, where passengers could continue their journey by the Shore Line south of Waukegan. This arrangement was terminated on February 13, 1955, but some coordination continues since it is stated that on four of the bus runs on this line drivers are instructed to wait for the arrival of trains at Edison Court Station.

A check made at the Edison Court Station after termination of the free transfer privilege shows that a number of persons still use the bus service to initiate or complete rail transportation to or from this station. However, the relative frequency of bus service on Washington Street, considered in connection with the more infrequent train arrivals and departures at Edison Court Station, indicates that purely local service is primarily important in the operation of this line.

Obviously, the Transit Company's operations on these particular routes from the beginning partook in part of the character of services "in connection with" railroad transportation and also in part of the character of local bus service. The free transfer and ticket honoring arrangements which have now been eliminated undoubtedly were an important factor serving to distinguish and characterize that aspect of the Transit Company's operations which was railroad-connected. I do not believe, however, that the cancellation of the tariffs covering these arrangements necessarily changed the bus services to which they related into purely local bus services, as the Company contends, since the essential function of supplementing the railroad transportation obviously continued to be performed. However, the elimination of the arrangements referred to is a circumstance of considerable importance because in the future this separate and distinguishable identity of the railroad-connected service will not be present.

The abandonment of the Shore Line on July 25, 1955, is another factor tending toward the view that the services now performed by the Transit Company are essentially and primarily those of any local bus company and that any railroad-connected service is too insubstantial to warrant continued treatment of the Company as an "employer". As noted above, it was largely upon the showing that it was necessary for the Shore Line patrons

to ride the bus line in or out of the City of Waukegan in order to get to or from the Shore Line that the Transit Company was held to be an "employer". It was understood that this particular bus line constituted or was in the nature of a direct extension of the rail operations of the Shore Line, especially since it was originally established by the Railway in substitution of its rail service in and out of the city from the Railway's downtown station.

Counsel for the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Division 900, representing the employees, points out that two buses of the Transit Company are used in the morning and in the evening to furnish transportation for employees of the Railway from the station at Lake Bluff on the Skokie line to the Railway's shop at Highwood. According to the Transit Company this is strictly on a charter basis, paid for by the Railway Company, and is temporary. This obviously minor operation cannot, of course, of itself justify finding the Transit Company to be substantially engaged in railroad-connected services.

I find, accordingly, that the complete abandonment of the Shore Line for passenger service, following the termination of the free transfer and ticket honoring arrangements referred to, has so changed the relationship of the bus service performed by the Transit Company to the rail service of the Railway that the bus service should now be regarded as essentially and primarily a local community bus service of the character provided by independent bus companies not controlled by or affiliated with railroads, and that the Transit Company is to be regarded as not substantially engaged in performing service "in connection with" rail transportation after abandonment of the Shore Line. Hence, the Transit Company has, in my opinion, ceased to be an "employer" under the Railroad Retirement Act and the Railroad Unemployment Insurance Act, effective July 25, 1955, the date of such abandonment.

Very truly yours,

Myles F. Gibbons  
General Counsel

RFB:em

CC: Director of Retirement Claims  
Director of Wage and Service Records